IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6543 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMED IQBAL ABDUL KARIM

Versus

UNION OF INDIA

Appearance:

MR RS SANJANWALA for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. It is unfortunate in the country that in the courts, where the State of Gujarat or Union of India are biggest litigants, their officers do not care to file reply as well as to remain present in the court. Though this matter was admitted on 12th September, 1989, the

respondents have not cared to file reply to the special civil application. After admission, this matter was placed for hearing in the court on 7th March 2000, on which date, it was adjourned to 20th March 2000, but nobody has bothered to file reply. On 20th March 2000, this matter has been adjourned to 11th April, 2000, and on which date also, nobody has bothered to file reply. On 11th April, 2000, the matter has been adjourned to 18th April, 2000, and the position remained to be the same. Today, reply is filed and nobody is present on behalf of respondents.

#. Heard the learned counsel for the petitioner and perused the special civil application. The averments made in the special civil application have not been controverted by respondents. Consequence thereof is to accept these averments to be correct.

#. This petition is filed by Mohammad Iqbal Abdul Karim Shaikh, power of attorney holder of Abdulkarim Abdulgani Shaikh, resident of Surat, and prayer is made for direction to the respondents to release the amount of 40,000 Riyals equivalent to Rs.2,00,000/=, being death compensation amount received by cheque by respondents from Saudi Arabian Government, along with interest at the rate of 18% p.a. Further prayer is made for payment of costs of Rs.20,000/=, being the amount which is stated to be incurred by him in obtaining succession certificate and for going to Saudi Arabia and other incidental expenses.

#. The facts of the case are that Mohamad Siddik A. Karim, since deceased, was employed as labourer in Adriaan Volker-Hochtief C.C.C. Joint Venture at Jubail, PO: Dahran, Saudi Arabia. He died on 12.4.1978 while in service there in an accident and the Joint Venture Adrian Volker-Hochtief C.C.C. sanctioned Saudi Riyals 40,000 as compensation to him. The value of one Riyal varied between Rs.4.50 to Rs.5/- at the relevant time, and the amount came to nearly Rs.2,00,000/=. The petitioner is son of Mohammad Siddik A. Karim Shaikh, who filed this petition through the power of attorney holder, i.e. elder brother of the deceased. The power of attorney holder submitted representation to the Hon'ble Minister for External Affairs, New Delhi, for transfer of compensation amount to him. The Minister for External Affairs, vide letter dated 26th June, 1978, asked the petitioner to submit succession certificate and general power of attorney in favour of Indian Embassy in Jeddah. These documents were submitted on 17.2.1979, which have been acknowledged vide receipt/ letter dated 13th March,

1980 by the External Affairs Consulate Section advising the petitioner that the documents were being forwarded to Indian Embassy at Jeddah. Thereafter, the power of attorney himself visited Indian Embassy at Jeddah in February 1981 to inquiry about the delay. The First Secretary (Consulate) Embassy of India, Mr.Baxi, asked the petitioner to submit arabic translation of documents. Those have also been submitted by petitioner on 15.3.1981. Thereafter, the petitioner personally went to the office of Saudi Arabian Ministry of External Affairs where he was informed that compensation amount had been sent to the Indian Embassy by cheque No.20759 dated 26.7.1398 Hizri, i.e. 3.7.1978, which was duly received by Indian Embassy on 27.1.1399 Hizri, i.e. December 1978. He further stated that Indian Embassy acknowledge receipt of cheque vide their letter No.31/2/3/1792 dated 27.1.1399 Hizri. The petitioner then went to the Indian Embassy in April 1981 and it was given to understand that the Indian Embassy had lost the cheque. The letter has been given to the petitioner dated 1.4.81. On 29th June 1981, the petitioner wrote a letter to the Secretary to the Government of India, Ministry of External Affairs, New Delhi, bringing out all these facts and requesting that payment be made to the petitioner immediately since the petitioner has carried out all the requirements including the submission of succession certificate. It is the case of petitioner that the Indian Embassy had also received the cheque and as such, the respondents cannot deny payment thereof to the petitioner. It was their duty to make payment of cheque to the petitioner. If they had lost the cheque, they can call for the duplicate cheque and do the needful and see that the petitioner is paid amount of cheque. Then the petitioner has given out the details of correspondence which has been made by him from time to time as well as those letters which have been received by him from the Government of India, Ministry of External Affairs (Consulate Section), New Delhi.

#. The learned counsel for the petitioner contended that it is case where the amount of compensation for the death of the deceased labourer has been received by Indian Embassy by cheque and in case cheque has been lost, the Union of India is responsible for making payment thereof to the petitioner. For their officers' negligence, carelessness and defaults, the petitioner cannot be put to suffer this loss. This cheque has been given in the year 1978 to the Indian Embassy but till date, this amount has not been paid. Mr.Sanjanwala, learned counsel for the petitioner contended that now the respondents are taking somersault and giving out that cheque has not been

received which is nothing but only giving a go-bye to their officers' inaction, omission or negligence or carelessness. The duplicate cheque may be received by the respondents from the Saudi Arabian Government but the petitioner cannot be denied of this amount of compensation.

#. The averments in special civil application and more particularly in para-4.2 have not been disputed. The averments made in para 4.3 have also not been disputed. It is true that in some of the letters, the respondents have come up with the case that cheque has not been received but the averments made in aforesaid paragraphs go to show that from the Saudi Arabian Ministry of External Affairs, the cheque of amount of compensation to be paid to the petitioner for death of labourer has been received in the Indian Embassy on 27.1.1399 Hizri, i.e. December 1978. The cheque number, its date, date of receipt, everything has been stated by petitioner and the same has not been controverted. It is also clearly borne out from the facts of this case that on the visit of the petitioner, he has been given out by Indian Embassy at Jeddah that the cheque has been received and it has been lost by the Indian Embassy. The petitioner also went to the office of Saudi Arabian Ministry of External Affairs and therefrom he got the information that cheque of the amount of compensation for death of deceased labourer has been sent to the Indian Embassy. These details have been taken by petitioner from the Saudi Arabian Ministry of External Affairs. It is really shocking that the Union of India, which is a Welfare State, and which is supposed to protect the rights of its citizens is coming up with totally arbitrary and unjustified defence. In case where the cheque is received and the same is lost, the duty of the respondents is there to arrange this payment of amount of compensation to the petitioner. They should have taken all the caution through Embassy at Jeddah. That has not been done. As usual, what it is there in the country is `Baburaj', the respondent, a Welfare State, felt satisfied and contended by making of correspondence here and there. The substance of the matter is to be considered and where the father of the petitioner, who lost his life while in service in Saudi Arabia and Saudi Arabia Government has paid compensation for this death, that amount has to reach to the hands of beneficiaries. It is equally the duty of the Union of India, through its Embassy at Jeddah, to see that this amount reaches in the hands of the beneficiary but both the officers of the Union of India, Ministry of External Affairs at Delhi as well as its Embassy at Jeddah have totally failed to discharge their duties and obligations.

The averments made by petitioner in the special civil application are uncontroverted and which are to be accepted that the cheque of 40,000 Riyals has been received by Indian Embassy from Saudi Arabian Government, Ministry of External Affairs, for payment thereof to the beneficiary, i.e. the petitioner herein, and that has been lost by the officers of the Indian Embassy at Jeddah. For this negligence, carelessness and default of the officers of respondent No.1 at its Embassy at Jeddah, the petitioner cannot be sufferer. The petitioner has spent huge amount for this litigation as well as to undertake journey to Saudi Arabia but despite of taking all these pains and sufferings and incurring heavy expenses, the result is only that he is still not receiving money. The respondent - Union of India, on the other hand, even has not cared to appear before this court through the advocate. This certainly deserves to be deprecated. This petition is of the year 1989 and for all these years, the petitioner is waiting for its decision and the relief to be granted to him.

#. In the result, this special civil application succeeds and the same is allowed and the Union of India is directed to deposit Rs.2 lacs with interest thereon at the rate of 12% p.a. from December 1978 till the date of deposit of the said amount in this court within a period of two months from the date of receipt of Writ of this order. This amount will be disbursed only when the petitioner appears before the court and not to his Power of Attorney holder. On deposit of this amount, the court will pass appropriate order for its disbursement or its investment, as the case may be, on filing of the application by the petitioner. It is a case where I find sufficient justification in the claim of the petitioner for costs of Rs.20,000/=. The Union of India is directed to pay Rs.20,000/= as costs of this petition. This amount has also to be deposited by the Union of India in the court. Rule is made absolute in aforesaid terms.

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(sunil)